

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1082 of 1997

in

SPECIAL CIVIL APPLICATION No 4325 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RAMESH SHAMJIBHAI

Versus

PARITOSH A PATEL

Appearance:

MR PJ KANABAR for Petitioner
MR RS SANJANWALA for Respondent No. 1
MR HS MUNSHAW for Respondent No. 2

CORAM : MR.JUSTICE C.K.THAKKER and
MISS JUSTICE R.M.DOSHIT

Date of decision: 22/10/97

ORAL JUDGEMENT (Per C.K.Thakker, J.)

Admitted. Mr R.S.Sanjanwala appears and waives

service of notice of admission on behalf of respondent No.1. Mr J.M.Barot for Mr H.S.Munshaw appears and waives service of notice of admission on behalf of respondents Nos.2 & 3. In the facts and circumstances of the case, the matter is taken up for final hearing today.

2. This appeal is filed against an order passed by the learned single Judge in Special Civil Application No.4325 of 1996 dated August 6, 1997. That petition was filed by the petitioner (respondent No.1 herein) for an appropriate writ, direction or order quashing and setting aside the order dated 1st May, 1996 by which the sale made in favour of the petitioner was ordered to be set aside on the ground that he had not paid the amount as per the offer made. It appears that when the main matter was posted for admission, notice was ordered to be issued. It was also brought to the notice of the Court that in the meanwhile, the Corporation had decided to allot the said unit to one Ramesh Shamjibhai (present appellant) on June 12, 1996. The Court permitted the petitioner to join Ramesh Shamjibhai as party respondent No.3 and notice was issued on July 31, 1997 and direct service was given to the petitioner. It was observed in the oral order that Ramesh Shamjibhai refused to accept service of notice and affidavit to that effect was filed by the petitioner. Relying on the said affidavit and basing the decision of refusal of notice of service by the present appellant Ramesh Shamjibhai, the learned Single Judge thought it fit to issue certain directions. Accordingly, the following directions were given:

"1. In view of the fact that the respondent Corporation has not given possession of the unit to respondent No.2 Ramesh Shamjibhai, it will be open to the respondent Corporation to return whatever amount received by it from said Ramesh Shamjibhai together with interest as per the rules.

2. Since the petitioner is desirous of running the unit in question, and as respondent No.3 Ramesh Shamjibhai has not chosen to remain present before this Court, a further chance may be given to the petitioner to run the same provided he clears the dues, if any pays the amount of instalments as per the Agreement and the amount of interest to be paid to respondent No.3 Ramesh Shamjibhai from 17.6.1996 till the amount is repaid.

3. The formality of handing over possession

to be completed within eight weeks from today."

In view of the directions, the learned single Judge finally stated;

"In view of the above, this petition is disposed of. Notice is discharged with no order as to costs. Status-quo order stands vacated."

2. We have heard Mr Kanabar, learned counsel for the appellant, Mr Sanjanwala, learned counsel for respondent No.1 and Mr Barot, learned counsel for respondents Nos.2 & 3. It was contended by Mr Kanabar that the appellant had not received any notice at all nor he had refused service of notice and he was not aware of proceedings before the learned single Judge. Hence the order passed by the learned Single Judge is violative of the principles of natural justice and fair play. He further submitted that even if it is assumed that notice was issued and the appellant refused service of notice, it was a notice as to why the petition should not be admitted. At the most, therefore, the petition could have been admitted, but no order could have been passed finally disposing the petition. He also submitted that though in the operative part of the order, the learned single Judge has observed that notice was discharged, in substance and in reality, the petition was allowed by granting full and complete relief in favour of the petitioner.

3. Mr Sanjanwala, on the other hand, submitted that notice was issued to the appellant and direct service was ordered to be effected. The petitioner had taken direct service and had attempted to serve the appellant. Since he refused service of notice, an affidavit was filed and hence, the learned Single Judge was within his power to pass order. In the interest of justice order was passed and no grievance can now be made by the appellant. He further submitted that no interference is called for against the order.

4. In the facts and circumstances of the case and without expressing any opinion on merits or on allegations and counter-allegations, we are of the view that the order passed by the learned Single Judge deserves to be set aside by remanding the matter to the learned single Judge to decide it in accordance with law. It is not in dispute that after the notice was issued, on the returnable date, petition was disposed of. No rule was issued. Though the learned Single Judge has observed that notice stood discharged, prima facie, the contention

of the learned counsel for the appellant is well founded that the petition was virtually allowed inasmuch as it affected adversely the rights of the appellant. In this circumstance, in our opinion, it would be better if the matter is sent back to the learned Single Judge for fresh disposal in accordance with law.

5. In the result, this Letters Patent Appeal is allowed. The order passed by the learned Single Judge is set aside and the matter is remanded to the learned Single Judge who will decide the same in accordance with law without being influenced in any manner whatsoever either by the observations made in the previous order or the order passed by us. The appeal is accordingly allowed to the above extent with no order as to costs.

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(vjn)